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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

TAMARA CODOCEO,

Plaintiff and Appellant,

v.

PROVIDENCE HEALTH SYSTEM
SOUTHERN CALIFORNIA et al,

Defendants and Respondents.

B275562

(Los Angeles County
Super. Ct. No. BC516670)

APPEAL from the judgments of the Superior Court of
Los Angeles County, Rick S. Brown, Judge. Affirmed.

The Salem Law Firm and Edmond E. Salem, for Plaintiff
and Appellant.

Hester Law Group, Barbara M. Reardon and Cecille L.
Hester, for Defendants and Respondents Providence Health
System Southern California and Providence Home Care.

Schmid & Voiles, Denise H. Greer, Deborah S. Taggart and
Ronan J. Duggan, for Defendant and Respondent Mudjianto
Chandra, M.D.

INTRODUCTION

Plaintiff and appellant Tamara Codoceo suffered a number of complications after giving birth to her son. She filed a complaint in the Los Angeles Superior Court against the various entities and doctors responsible for her treatment, alleging they negligently caused her injuries. The defendants and respondents filed motions for summary judgment in compliance with the applicable statutory requirements. Rather than comply with the statutory requirements for opposing the motions, Codoceo raised several procedural objections.

The trial court overruled the objections and granted summary judgment to all defendants. Codoceo now appeals. Codoceo's attempt to challenge the motions on procedural grounds rather than on the merits was not adequate to defeat summary judgment. Accordingly, we affirm.

FACTUAL BACKGROUND

On May 1, 2012, plaintiff and appellant Tamara Codoceo was admitted to defendant and respondent Providence Tarzana Medical Center (Providence Tarzana) by Dr. Michael Eshaghian (not a party to this appeal) for the birth of her son. Codoceo delivered her son via Caesarian section and was discharged on May 5, 2012.

On May 10, 2012, Codoceo returned to Providence Tarzana complaining of lower abdominal pain. The emergency room physician diagnosed a mild abdominal wound infection and prescribed an antibiotic. Codoceo was discharged at 6:37 a.m., but returned to Providence Tarzana at 5:53 p.m. complaining of persistent drainage of a large amount of bloody, yellowish liquid from the Caesarean section incision. The emergency room physician determined that Codoceo had abdominal wall cellulitis

and perhaps an abscess, treated the infection, ordered a culture of the abdominal wound, and collected a nasal swab specimen for a routine methicillin resistant *S. aureus* (MRSA) screening. Codoceo was discharged the following day with medication and an order for home health care services.

On May 12, 2012, the nasal swab screen revealed Codoceo was positive for MRSA. On May 13, 2012, the results of the abdominal wound culture revealed the culture “grew rare staphylococcus species coagulase negative.” Dr. Eshaghian ordered home care services through defendant and respondent Providence Home Care to clean the incision and change the gauze dressing.

On May 24, 2012, Codoceo returned to the emergency room at Providence Tarzana because she was experiencing breast swelling and redness and she had a fever. The emergency room physician diagnosed Codoceo with bilateral mastitis, treated her breast, prescribed the antibiotic Dicloxacilin, and asked her to follow up in the emergency room in two days. The physician also drew some pus from Codoceo’s breast and sent it for a culture. On May 27, 2012, the results of the culture revealed 2+MRSA, which was susceptible to the antibiotic Bactrim. The emergency room physician notified Codoceo by telephone, and asked her to stop the previous antibiotic she was taking and switch to Bactrim. Codoceo reported she was much improved from three days earlier.

On June 27, 2012, Codoceo returned to the emergency department at Providence Tarzana. The mastitis did not appear to be getting better. Codoceo was admitted to the hospital and given an antibiotic injection. The next day, defendant and respondent Mudjianto Chandra, M.D, a general surgeon,

performed some tests and determined Codoceo had an abscess in her breast. Dr. Chandra performed a mastotomy (breast incision) to drain the abscess and clean the area. Dr. Chandra packed the wound with gauze dressing, and transferred Codoceo to the recovery area in stable condition.

On June 30, 2012, results of a culture of Codoceo's breast revealed 3+MRSA, also susceptible to Bactrim. Dr. Chandra discharged Codoceo that day with an order for daily, in-home nursing services from Providence Home Care to change the gauze dressing and clean the wound. Codoceo was also given another prescription for Bactrim. Providence Home Care treated Codoceo's wound on almost a daily basis from July 1-August 27, 2012.

On July 9, 2012, Codoceo returned to see Dr. Chandra, reporting continued pain. Dr. Chandra noted there was "residual/retained old packing gauze" present in the wound. Dr. Chandra removed the gauze that day. Providence Home Care nurses continued to treat Codoceo's wound on an almost daily basis through August 27, 2012. In addition, Codoceo had five follow-up visits with Dr. Chandra in July and August 2012. On August 13, 2012, Dr. Chandra noted Codoceo was doing well, and the breast wound was clean and almost closed. Dr. Chandra instructed Codoceo to return to the clinic as needed. As of August 27, 2012, the wound to the left breast was closed and there was no drainage.

PROCEDURAL HISTORY

In July 2013, Codoceo filed a complaint for professional malpractice against Providence Tarzana, Providence Home Care, Dr. Chandra, and other physicians who are not parties to this appeal. She alleged between May 2012 and approximately

July 3, 2012, all defendants negligently failed to properly diagnose, monitor, and treat her injuries.

In March 2014, Codoceo filed amended complaint forms stating that Providence Tarzana Medical Center and Providence Home Care were incorrect names, and that the true name of the defendants was Providence Health & Services.

Dr. Chandra and Providence Health & Services filed answers denying the allegations in the complaint and raising several affirmative defenses.

Shortly thereafter, counsel for Providence Tarzana and Providence Home Care informed Codoceo via letter that she represented both entities, and that Providence Health & Services was not a health care provider or a licensee of either facility. Attached to the letter were copies of the business licenses of both Providence Tarzana and Providence Home Care.

After some confusion about the correct legal names of Providence Tarzana and Providence Home Care, Codoceo and counsel for Providence Tarzana and Providence Home Care entered into a stipulation, filed with the court, that “defendant, ‘PROVIDENCE HEALTH SYSTEM SOUTHERN CALIFORNIA, a Religious Corporation, dba PROVIDENCE TARZANA MEDICAL CENTER and PROVIDENCE HOME CARE’, shall be substituted in place and stead of ‘defendant, PROVIDENCE HEALTH & SERVICES.’ ”

Dr. Chandra moved for summary judgment. His motion was supported by an expert declaration by a board-certified surgeon and the medical records reviewed by the expert. Filed concurrently with the motion was Dr. Chandra’s separate statement of material facts and evidence.

Providence Tarzana and Providence Home Care each filed separate motions for summary judgment. Each motion was supported by separately bound evidence and declarations, as well as separate statements of undisputed material facts.

Codoceo objected to and moved to strike Dr. Chandra's separate statement of undisputed material facts, along with filing a partial opposition to the motion. Codoceo did not attach a separate statement responding to each of Dr. Chandra's undisputed material facts. Codoceo's objection and partial opposition were based on her contention that Dr. Chandra's separate statement did not comply with the Rules of Court because it did not refer to specific pages of the cited medical records relied upon by Dr. Chandra's expert. Codoceo's counsel attached a declaration stating that he had a medical expert who prepared a draft declaration raising triable issues of material fact, but the expert could not finalize the declaration without reference to the page numbers in the medical records. Codoceo's counsel did not attach the expert declaration.

Codoceo also submitted objections to Providence Tarzana's and Providence Home Care's filing of separate motions for summary judgment. Codoceo's objections were based on her contention that both Providence Tarzana and Providence Home Care were fictitious business names and that Providence Health System Southern California was the parent corporation. Codoceo argued Providence Health System Southern California was required to file one motion for summary judgment because Providence Tarzana and Providence Home care were its dba's.¹

¹ The designation "dba" or "doing business as" simply indicates that a business entity operates under any name other than the corporate name stated in its articles of incorporation

Codoceo's counsel did not file a separate statement responding to Providence Tarzana's and Providence Home Care's undisputed facts, nor did she file her expert's declaration.

In January 2016, all of respondents' motions were argued and granted. Each respondent prepared and filed proposed orders for entry of summary judgment. Codoceo filed notices of disapproval of all the proposed orders. Codoceo attached her expert's declaration to the notices of disapproval. The court overruled the objections Codoceo raised in her notices of disapproval.

On March 11, 2016, the court entered judgment in favor of Dr. Chandra.

On March 16, 2016, Codoceo filed a motion for revocation of the proposed orders granting summary judgment in favor of Providence Tarzana and Providence Home Care. On March 23, 2016, before the motion was heard, the court entered judgment in favor of Providence Tarzana and Providence Home Care.

Codoceo filed motions for a new trial as to all defendants. In support of the motions for new trial, Codoceo submitted her expert's declaration. On May 27, 2016, the trial court heard and denied the motions for new trial. The trial court acknowledged that Codoceo filed an expert declaration with her motion, but also noted that Codoceo had the declaration four days before the deadline for filing her opposition to the motions for summary judgment, but chose not to file it.²

filed with the California Secretary of State. (Bus. & Prof. Code, § 17900.)

² At oral argument, Codoceo's counsel stated he asked the trial court for a continuance to file the necessary opposition papers. Opposing counsel refuted this claim, and we find no

Codoceo timely appealed.

DISCUSSION

Codoceo argues the judgments in favor of Dr. Chandra, Providence Tarzana, and Providence Home Care must be reversed on the following grounds: (1) Dr. Chandra's separate statement of material facts did not comply with California Rules of Court, rule 3.1350; (2) Providence Tarzana and Providence Home Care impermissibly filed separate motions for summary judgment; and (3) the trial court erred by failing to consider her expert declaration prior to entering judgment on the motions for summary judgment.

A. Standard of Review

While a trial court's ruling on summary judgment is reviewed de novo, we "independently review the parties' supporting and opposing papers and apply the same standard as the trial court to determine whether there exists a triable issue of material fact." (*Truong v. Glasser* (2009) 181 Cal.App.4th 102, 109.) The court's power to deny summary judgment on the basis of failure to comply with California Rules of Court, rule 3.1350, is discretionary. Therefore we review the trial court's decision not to reject a noncompliant pleading for abuse of discretion. (*Truong*, at p. 118.)

B. Applicable Legal Principles

To defeat a motion for summary judgment, the opposing party must produce sufficient evidence to make a prima facie showing of a triable issue of material fact. Pursuant to Code of Civil Procedure section 437c, subdivision (b)(2), the opposition,

evidence in the record that Codoceo asked for a continuance at any point during the proceedings.

where appropriate, “shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken.” In addition, “[t]he opposition papers shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. . . . Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court’s discretion, for granting the motion.” (*Id.*, subd. (b)(3).)

In a medical malpractice case “where the conduct required of a medical professional is not within the common knowledge of laymen, a plaintiff must present expert witness testimony to prove a breach of the standard of care.” (*Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 509; *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

C. Dr. Chandra

Codoceo argues the trial court erred in granting summary judgment in favor of Dr. Chandra because he failed to comply with the requirements of rule 3.1350 of the California Rules of Court. Specifically, Codoceo asserts neither Dr. Chandra’s separate statement nor his expert’s declaration refer to specific page numbers of the medical records upon which the medical expert relied in reaching his conclusions. We conclude the trial court did not err and agree with the trial court’s analysis of rule 3.1350 of the California Rules of Court.

California Rules of Court, rule 3.1350(d)(3) provides that, in the separate statement of undisputed material facts supporting a motion for summary judgment, “[c]itation to the

evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers.” Rule 3.1350(h) provides the following example: “Plaintiff and defendant entered into a written contract for the sale of widgets. Jackson declaration, 2:17-21; contract, Ex. A to Jackson declaration.”

After carefully reviewing Dr. Chandra’s statement of undisputed material facts, we conclude he used the proper format for his citations. In the second material fact alleged, for example, Dr. Chandra included the following citation: “Declaration of Leo A. Gordon, M.D., paragraph 6.A; Plaintiff’s medical records from Providence Tarzana Center attached to the declaration of Ronan J. Duggan as Exhibit C.)” This is in substantial compliance with the sample format provided in rule 3.1350 of the California Rules of Court, and each subsequent material fact alleged in the declaration follows the same citation format. In the sample format, all that is required is that the moving party list the page and line number of the declaration, followed by a reference to the exhibit. The rule does not mandate inclusion of the exact page number of the referenced exhibit.

Here, Dr. Chandra’s expert provided an eight-page declaration consisting of 13 paragraphs. Although Dr. Chandra did not refer to the line numbers of the declaration in his statement of undisputed facts, he did refer to the paragraph number and, where applicable, the subsection of the paragraph. The trial court concluded this format was sufficient “ ‘to inform the opposing party of the evidence to be disputed to defeat the motion.’ Which is one of the main purposes of the separate statement required,” quoting *United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337. We agree.

First, the declaration was only eight pages long. Citing to each paragraph within this declaration was more than sufficient to inform Codoceo of the evidence provided in the declaration. Second, as discussed above, Dr. Chandra was not required to then refer to the exact page number within the exhibit that his expert relied on. And, finally, as noted by the trial court, Dr. Chandra's supporting statement was filed more than one year before the hearing on the motion for summary judgment, affording Codoceo and her expert ample time to locate the pages within the exhibits referenced in Dr. Chandra's statement of undisputed material facts. Accordingly, we find no abuse of discretion.

Ultimately, Codoceo failed to meet her burden to establish the existence of a triable issue of material fact. She did not file a separate statement responding to Dr. Chandra's undisputed material facts, nor did she file an expert declaration. As discussed above, in a medical malpractice case such as this, where a medical professional's conduct is not within the common knowledge of laypersons, the parties must also submit expert witness declarations to prove a breach of the standard of care. (*Bushling v. Fremont Medical Center, supra*, 117 Cal.App.4th at p. 509.) Although Codoceo filed a partial opposition to Dr. Chandra's motion for summary judgment on the grounds discussed above, she did not follow the requirements of Code of Civil Procedure 437c, subdivision (b)(2) or (3), and did not file her expert's declaration. Because failure to do so is sufficient grounds upon which to grant Dr. Chandra's motion, the trial court properly granted Dr. Chandra's motion for summary judgment. (Code Civ. Proc., § 437c, subd. (b)(3).)

D. Providence Tarzana and Providence Home Care

Codoceo argues Providence Tarzana and Providence Home Care were dba's of Providence Health System Southern California, and further asserts that, pursuant to *Pinkerton's, Inc. v. Superior Court* (1996) 49 Cal.App.4th 1342, 1349 (*Pinkerton's*), once the true corporate name of a business entity is discovered, all further proceedings should be in the corporate, not fictitious business's name. Codoceo also argues the plain language of Code of Civil Procedure section 437c prohibits more than one motion for summary judgment by a party.

First, Providence Home Care argued it was not a dba of Providence Home Care, but its own separate entity. The pleadings filed on behalf of Providence Home Care are not consistent on this point, as some of the declarations filed in support of their motion for summary judgment state that Providence Home Care is a dba of Providence Health System Southern California. The parties argued this issue at length at the motions hearing, but the trial court found Codoceo's argument was irrelevant and had no merit.

The trial court determined it would have been inappropriate for a single motion to have been filed because each distinct entity was subject to different standards of care, and because different facts regarding the treatment Codoceo received from the two entities raised different causation issues. Furthermore, the court determined there was no authority prohibiting the filing of two motions for summary judgment under the circumstances presented. We agree with the trial court that whether Providence Tarzana and/or Providence Home Care were dba's of Providence Health System Southern California is irrelevant under these circumstances.

Codoceo's reliance on *Pinkerton's* does not assist her. There, plaintiffs sued a corporation by the fictitious business name it used in California. (*Pinkerton's*, *supra*, 49 Cal.App.4th at p. 1344.) The parent corporation responded to the complaint and obtained a dismissal. Nonetheless, plaintiffs then obtained a default against the entity operating under a fictitious business name. (*Id.* at pp. 1345-1346.) The trial court then denied the corporation's motion to set aside the default. (*Id.* at p. 1347.) The Court of Appeal issued a peremptory writ of mandate directing the trial court to vacate the order, holding that once the corporation appeared for the dba and obtained a dismissal, the case was at an end. (*Ibid.*)

Codoceo acknowledges *Pinkerton's* is not directly on point, but nonetheless urges us to adopt the reasoning of *Pinkerton's* to conclude that once Providence Tarzana and Providence Home Care stipulated they were dba's of Providence Health System Southern California, their fictitious business names no longer had any legal effect. We will not.

Pinkerton's merely stands for the proposition that once a corporate entity has been dismissed from an action, further action against its dba is not permissible. Here, none of the parties were dismissed from the action; hence, the case had not ended. Additionally, Codoceo could only defeat summary judgment by opposing the motions on the merits, and supporting them with an expert declaration and a statement addressing Providence Tarzana's and Providence Home Care's undisputed material facts. Codeco did neither. Raising procedural objections in lieu of filing and arguing a complete opposition to the motions for summary judgment did not absolve her of these requirements. Nothing in *Pinkerton's* suggests she could effectively defeat

motions for summary judgment solely on a procedural argument that two distinct dba's improperly filed separate motions for summary judgment. There is simply no authority for this proposition.

Codoceo also asserts Code of Civil Procedure section 437c prohibits one corporation from filing two motions for summary judgment. She quotes the following language: "A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc., § 437c, subd. (a)(1).) She points out that the use of the singular "[a] party" in this section is not an isolated reference because other subdivisions refer to the singular "[a] party" rather than the plural. Codoceo also directs our attention to various other subdivisions that use the singular "the motion" instead of the plural "motions." (*Id.*, subds. (b), (c), (g) & (h).)

Codoceo interprets the language of Code of Civil Procedure section 437c to mean one party may bring only one motion. Codoceo insists Providence Tarzana and Providence Home Care are one party—Providence Health System Southern California. Hence, only Providence Health System Southern California could file a motion for summary judgment, and it was precluded from filing separate motions on behalf of each of its dba's. We are not persuaded.

Code of Civil Procedure section 17, subdivision (a) provides that a statute that speaks in the singular includes the plural: "Words used in this code in the present tense include the future as well as the present. Words used in the masculine gender include the feminine and neuter. The singular number includes the plural and the plural number includes the singular." Thus,

the singular use of “[a] party” and “a motion” in Code of Civil Procedure section 437c can be construed to include more than one party and more than one motion. (See *Pratt v. Robert S. Odell & Co.* (1944) 63 Cal.App.2d 78, 82-83 [“party” construed to include “parties”]; *River Trails Ranch Co. v. Superior Court* (1980) 111 Cal.App.3d 562, 565 [“surety” construed to include “sureties.”]). We decline to adopt Codoceo’s position that Code of Civil Procedure section 437c must be construed to mean that one party cannot bring more than one motion. Again, Codoceo provides no authority for this proposition, nor do we find any.

Furthermore, Codoceo has not even attempted to demonstrate prejudice. In her objection to the filing of two motions for summary judgment, Codoceo merely asserted it was “inherently prejudicial” for one corporate defendant to file two motions for summary judgment. She did not provide the trial court with facts or arguments demonstrating how she specifically suffered prejudice. On appeal, Codoceo merely offers a generalized hypothesis that courts would be overwhelmed with filings, and plaintiffs saddled with burdensome costs, if a defendant with fictitious business names is permitted to file multiple motions for summary judgment. Again, Codoceo has failed to allege facts demonstrating *she* was prejudiced by the filing of separate motions for summary judgment *in this case*.

Furthermore, as discussed above, Codoceo did not meet her burden to establish the existence of a triable issue of material fact. She did not file her expert’s declaration, nor did she file a separate statement responding to Providence Tarzana’s and Providence Home Care’s undisputed material facts. As failure to comply is sufficient grounds to grant the motion, we conclude the trial court properly granted Providence Tarzana’s and Providence

Home Care's motions for summary judgment. (Code Civ. Proc., § 437c, subd. (b)(3).)

E. Codoceo's expert declaration

Codoceo contends the trial court erred by failing to consider her expert declaration before entering judgment on the motions for summary judgment. Not so.

As discussed above, the trial court stated that Codoceo filed her medical expert's declaration, but did so after the court entered judgment on the motions for summary judgment. The court also noted that Codoceo had the declaration four days before her opposition was due, but chose not to file it.

On appeal, Codoceo argues she did not file her declaration after the court entered judgment; rather, she initially filed it with her notices of disapproval of the proposed orders. Because the court had not entered judgment on the motions for summary judgment before she filed her declaration, she argues the court was required to consider it in conjunction with all other submitted papers before it issued any orders granting summary judgment.

While the record demonstrates Codoceo did file her expert declaration before the court entered judgment on the motions for summary judgment, we cannot conclude the court was required to consider it after it had delivered its decision on the record in open court after a full motions hearing.

Further, as discussed above, Codoceo never filed a statement responding to Dr. Chandra's, Providence Tarzana's, or Providence Home Care's undisputed material facts. This alone constitutes grounds for granting summary judgment. (Code Civ. Proc., § 437c, subd. (b)(3).)

Codoceo relies on *Kulesa v. Castleberry* (1996) 47 Cal.App.4th 103 for the proposition that the court must consider not only the papers submitted before ruling on a motion for summary judgment, but also those submitted after the hearing on the motions has concluded. In *Kulesa*, however, the parties had submitted all necessary papers prior to the conclusion of the hearing on the motions for summary judgment. (*Id.* at pp. 107-108.) Nothing in *Kulesa* suggests a party may (1) withhold a declaration in a medical malpractice case until after the court conducts a full hearing on the motions for summary judgment and declares its ruling on the record; (2) attach the declaration to a motion challenging the court's ruling; and (3) then insist the court consider it before entering judgment. There is simply no authority for this proposition. Nor should there be.

CONCLUSION

Codoceo failed to meet her burden of producing sufficient evidence to make a prima facie showing of a triable issue of material fact. Codoceo made a tactical decision not to file a separate statement responding to Dr. Chandra's, Providence Tarzana's, or Providence Home Care's undisputed material facts. She withheld her expert's declaration until after the hearing on the motions for summary judgment had concluded and the trial court had delivered its decision on the record in open court. In lieu of filing an opposition sufficient to defeat summary judgment on the merits, she objected to respondents' motions on procedural grounds. She is bound by her choices, and is not entitled to re-litigate her claims in the trial court.

DISPOSITION

The judgments are affirmed. Parties to bear their own costs on appeal.

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STRATTON, J.

We concur:

GRIMES, Acting P. J.

WILEY, J.